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Technology Center 2100

Paper No. 14

In re Application of Barrenscheen et al.	:
Application No. 09/124,288	: DECISION GRANTING PETITION
Filed: July 28, 1998	: TO WITHDRAW THE HOLDING OF
Attorney Docket No. GR 98 P 2078	: ABANDONMENT UNDER
Title: MEMORY DEVICE AND METHOD FOR	: 37 C.F.R. §1.181 (a)
OPERATING THE MEMORY DEVICE	:

This is a decision on the petition with fee filed September 9, 2002 to revive under 37 C.F.R. § 1.137(B). Based upon a review of the file history, the petition is being treated as a petition to withdraw the holding of abandonment mailed July 8, 2002 (Paper No. 12) under 37 C.F.R. § 1.181(a).

The petition is **GRANTED**.

Applicable Prosecution History

April 12, 2000	Non-final Office action mailed (Paper No. 6).
Sep 12, 2000	Amendment A filed (Paper No. 7) with two month extension of time.
Jan 25, 2001	Teleconference held (see remarks on page 5 of Paper No. 10). Supplemental Amendment B filed via fax.
Feb 27, 2001	Notice of Non-Responsive Amendment mailed (Paper No. 11).
March 5 or 13, 2001	Telephone interview (no paper no.) wherein the examiner indicates the reason for the non-responsive notice was moot and no further action by applicants was needed.
July 8, 2002	Notice of Abandonment mailed (Paper No. 12) with examiner indicating, "No reply has been received" to the Office letter mailed on 27 February 2001.

Issue

Does the record support petitioners' statement that no Office action was outstanding and therefore the Notice of Abandonment was improper?

Decision

The practitioner had provided a *responsive* amendment on September 12, 2000. Subsequent to that the examiner apparently attempted to initiate an examiner's amendment to place the case in condition for allowance. Rather than approving that proposed amendment, the applicants elected to file a supplemental response on January 25, 2001 via facsimile. The record suggests a problem occurred with the fax transmission that caused the examiner to indicate the supplemental response of January 25, 2001 was non-responsive and to set a one-month period for reply. Applicants' representative was notified either on March 5 (examiner's interview summary found in the file) or March 13 (see petitioners' statement, page 3), 2001 that the supplemental response was no longer defective. On July 8, 2002, a Notice of Abandonment was mailed with the examiner indicating, "No reply has been received."

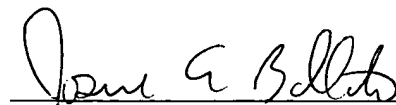
A review of the record shows the first amendment filed on September 12, 2000 was responsive under 37 C.F.R. § 1.111. Therefore, even if applicants' filing of January 25, 2001 was held ultimately to be non-responsive, the examiner should have complied with the guidelines set forth in MPEP § 707, Examiner's Letter or Action" and sent out a complete Office action in response to applicants filing of September 12, 2000.

The record supports petitioners' statements that they were notified in March 2001 that the supplemental amendment filed January 25, 2001 was responsive and that no further response was necessary *from applicants*. It should be noted that both amendments filed on September 12, 2000 and January 25, 2001 were formally entered into the application. Therefore, the examiner's indication of the application being abandoned in view of applicants' failure to timely file a proper reply to the Office letter mailed on 27 February 2001 was in error.

Accordingly, the petition is **GRANTED**. The application was not abandoned in fact. The Office regrets any inconvenience this error may have caused petitioners.

As no fee is required for a petition filed under 37 C.F.R. § 1.181, the application file is being forwarded for a refund of the petition fee of \$1280.00 to deposit account no. 12-1099. Thereafter the application will be forwarded to the examiner for consideration of applicants' amendments filed on September 12, 2000 and January 25, 2001. Should the applicants not receive a response from the Office within two months from the mail date of this decision, they are advised to contact the examiner's supervisor, Mr. Ayaz Sheikh at 703-305-9648.

Telephone inquiries on this decision should be directed to the undersigned at 703-308-0269.



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